

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO
ALBUQUERQUE DIVISION

UNITED STATES OF AMERICA,)	CASE NO: 1:19-CR-03113-JB-9
)	
Plaintiff,)	CRIMINAL
)	
vs.)	Albuquerque, New Mexico
)	
AMANDA SILVA,)	Thursday, March 12, 2020
)	
Defendant.)	(11:01 a.m. to 11:12 a.m.)

INITIAL APPEARANCE / SHOW CAUSE HEARING

BEFORE THE HONORABLE LAURA FASHING,
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For Plaintiff: ELAINE RAMIREZ, ESQ.
U.S. Attorney's Office
District of New Mexico
P.O. Box 607
Albuquerque, NM 87103

For Defendant: BARRY PORTER, ESQ.
Burgess & Porter, LLC
400 Gold Ave. SW, Suite 910
Albuquerque, NM 87102

U.S. Pretrial/Probation: Jeff Martinez-Spelich

Court Reporter: Recorded; Rio Grande

Clerk: C. Lopez

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Albuquerque, New Mexico; Thursday, March 12, 2020; 11:01 a.m.

(Call to Order)

THE CLERK: United States of America versus Amanda
Silva.

MS. RAMIREZ: Good morning, your Honor. Elaine
Ramirez on behalf of the United States.

THE COURT: Good morning.

MR. PORTER: Good morning, your Honor. Barry Porter
on behalf of Amanda Silva. She's in custody and she's present.

THE COURT: All right. Good morning to both of you.

So we are here actually on an initial appearance on a
Petition for Action on Conditions of Supervised Release. The
purpose of this hearing, Ms. Silva, is to make sure that you
understand the allegations against you, the potential
repercussions if these allegations are deemed to be true; and
then -- or found to be true, and then also your rights under
the Criminal Justice System. So let me start with your rights.

You do have the right to remain silent. You do not
have to make a statement and any statement you do make could be
used against you.

You have the right to an attorney. If you can't
afford to hire an attorney, one will be appointed to represent
you free of charge. You have Mr. Porter here so I assume
that's been taken care of.

Are you the attorney on the underlying case?

1 **MR. PORTER:** Actually Susan Burgess-Farrell, my law
2 partner.

3 **THE COURT:** Okay. And then finally, Ms. Silva, you
4 do have the right to a show cause hearing. At a show cause
5 hearing, the government would have to present evidence to
6 establish that you indeed violated the conditions of your
7 pretrial release as alleged in this petition.

8 If they're successful in that showing then the
9 question becomes if there -- whether there are other conditions
10 that can be imposed which will assure your appearance and the
11 safety of the community or whether your pretrial release should
12 be revoked and you should remain in custody pending resolution
13 of the charges against you.

14 Do you understand the rights I've just gone over?

15 **THE DEFENDANT:** Yes, your Honor.

16 **THE COURT:** Okay. So have you received a copy of the
17 petition?

18 **THE DEFENDANT:** Yes, your Honor.

19 **THE COURT:** Have you had a chance to read the
20 petition and go over it with your attorney?

21 **THE DEFENDANT:** Yes, ma'am.

22 **THE COURT:** All right. So this petition alleges that
23 you violated some conditions of your pretrial release. It says
24 you violated the condition that you reside at the La Pasada
25 Halfway House and follow the rules and regulations of the

1 halfway house. And also there is a zero tolerance condition on
2 your conditions of release.

3 Do you understand the allegations against you?

4 **THE DEFENDANT:** Yes.

5 **THE COURT:** Okay. And then -- and you understand
6 that if I find that these allegations are true then I'll either
7 order that you remain in custody or I'll see if there are other
8 conditions that could be imposed that would assure your
9 appearance?

10 **THE DEFENDANT:** Yes, ma'am.

11 **THE COURT:** Okay. So Mr. Porter, how would you like
12 to proceed?

13 **MR. PORTER:** Yes, your Honor. Just so the court's
14 aware, Ms. Silva and I discussed all of her rights. At this
15 time we understand the allegations. And there's something kind
16 of curious here on the conditions of release actually. She --
17 one of her conditions was -- that was issued by the court was
18 to maintain her residence at La Pasada. What -- what's alleged
19 that she is willing to admit to that she did violate one of
20 their rules which says "a female resident cannot have contact
21 with a male resident". And there was an instance where she was
22 in an elevator and got some hickeys with a male resident. So
23 she'll admit that today.

24 We do have an alternative plan that we want to
25 present to the court, a third-party release that has already

1 been screened by the Santa Fe Pretrial Services Office.

2 **THE COURT:** What's the government's position on that?

3 **MS. RAMIREZ:** Your Honor, we would oppose any
4 condition of release. There was a zero tolerance for a reason.
5 The defendant -- just to give the court some context.

6 When she was initially arrested, she was intoxicated,
7 under the influence, refused to talk to Pretrial, was
8 disrespectful in every way possible. It took some time for a
9 motion to be filed for conditions of release to be considered.
10 At that time Judge Molzen, over the opposition of both
11 Probation -- or I'm sorry -- Pretrial and the United States,
12 agreed to a condition of release at La Pasada for this
13 defendant. Within 90 days she has since been asked to leave La
14 Pasada. And in addition, she has not exhibited any interest in
15 seeking employment. And so therefore we believe that the best
16 place for her is back in custody.

17 **MR. PORTER:** And so, your Honor, that's basically
18 what Ms. Silva will admit to is the violation of the La Pasada
19 rule that she not have contact with males.

20 **THE COURT:** Yeah. I mean, I'll tell you. I'm not
21 one to override another judge's zero tolerance policy. So --

22 **MR. PORTER:** Well, your Honor, if I could?

23 **THE COURT:** Sure.

24 **MR. PORTER:** So the little bit of the context of this
25 case: September 19th, Ms. Silva was arrested. Then she stayed

1 in custody for two months. Was released on November 20th by
2 Judge Molzen.

3 The big concerns were drug and alcohol use, her
4 attendance at court hearings and following through with any
5 counseling.

6 So there were 26 different conditions placed upon
7 Ms. Silva. Out of all of those conditions, there's one
8 violation that she's admitting to and that has been alleged.

9 She had no positive tests. La Pasada checks you
10 alcohol in and out every time you go in the facility and they
11 check randomly for drugs. She had absolutely no positive tests
12 or any other violations.

13 She had absolutely no issue with reporting. And not
14 only was she making all of her reporting to Pretrial Services,
15 she came to our office twice a week for two hours to review
16 discovery on a computer. She was always on time. She stayed
17 the duration and she returned to La Pasada as directed. So --

18 **THE COURT:** Well, Mr. Porter, I'll tell you. Like I
19 said, I -- it seems to me we can do -- I'm not going to
20 overrule a zero tolerance condition that was imposed by Judge
21 Molzen. What I -- what I am willing to do -- and we can do it
22 either way. If you want to, we can reset the detention hearing
23 so that you can -- you'll have to schedule it before Judge
24 Molzen and then you can argue to her why it is that zero
25 tolerance in this particular setting. I mean, I can take -- we

1 can either continue the whole hearing until that --

2 **MR. PORTER:** Yeah.

3 **THE COURT:** -- both show cause or detention or/and
4 detention or we can -- I can accept your admission to the one
5 violation and then you can have your detention hearing before
6 Judge Molzen. If I'm deciding, I'm not overriding a zero
7 tolerance policy imposed by a different judge.

8 **MR. PORTER:** Your Honor, and I think that actually is
9 wise because our information about what the zero tolerance
10 applied to is probably going to require us to get the
11 transcript.

12 **THE COURT:** Okay.

13 **MR. PORTER:** So we would proceed with the admission
14 today, ask the court to reset this matter as soon as possible
15 before Judge Molzen.

16 **THE COURT:** Okay. So I -- do you have any objection
17 to that, Ms. Ramirez?

18 **MS. RAMIREZ:** I do not.

19 **THE COURT:** I'm sorry?

20 **MS. RAMIREZ:** I do not.

21 **THE COURT:** Okay. All right. So Ms. Silva, can I
22 just ask you to raise your right hand and be sworn please.

23 **(Defendant sworn)**

24 All right. Ms. Silva, you're now under oath and
25 you're required to tell me the truth. If you fail to tell me

1 the truth, you could be prosecuted for either perjury or false
2 statement and anything you say can be used against you.

3 Do you understand that?

4 **THE DEFENDANT:** Yes, ma'am.

5 **THE COURT:** Okay. So Ms. Silva, your attorney has
6 indicated that you are willing at this point to make an
7 admission as to what happened at La Pasada and that you
8 violated one of the rules at La Pasada. So I'm going to let
9 you go ahead and tell me what it is that you did that violated
10 the rules of La Pasada's.

11 Let me just ask you: Were you aware that there was a
12 rule in place that you're not to have contact with male
13 residents at La Pasada?

14 **THE DEFENDANT:** it's listed in their handbook.

15 **THE COURT:** Okay.

16 **THE DEFENDANT:** It's -- It says "It's prohibited to
17 have contact with any resident."

18 **THE COURT:** With a male resident?

19 **THE DEFENDANT:** With any resident.

20 **THE COURT:** You're not allowed to have contact with
21 female residents? Don't you share a room with a female
22 resident?

23 **THE DEFENDANT:** Yeah. You should but you're supposed
24 to stay like in your own area.

25 **THE COURT:** Okay. All right. So and was there a

1 point in time when you had contact with a male resident?

2 **THE DEFENDANT:** Yes, ma'am.

3 **THE COURT:** Okay. And during this contact, according
4 to your attorney, you received some hickeys. Is that accurate?

5 **THE DEFENDANT:** Yes, ma'am.

6 **THE COURT:** Okay. Are you satisfied with that
7 factual basis?

8 **MS. RAMIREZ:** Yes, your Honor.

9 **THE COURT:** All right.

10 All right. Ms. Silva, I will accept your admission
11 and I will find that you did violate the conditions of your
12 pretrial release by violating the rules at the La Pasada
13 Halfway House. But I will continue the detention hearing to as
14 soon as possible as soon as it can be heard by Judge Molzen.
15 All right?

16 **MR. PORTER:** Thank you, your Honor.

17 **THE COURT:** Anything further, Mr. Porter?

18 **MR. PORTER:** No, your Honor, thank you.

19 **THE COURT:** All right. Ms. Ramirez?

20 **MS. RAMIREZ:** Yes, your Honor. One additional thing
21 and that is there are some photographs where the defendant
22 appears to be pregnant, although she has not disclosed that.
23 And so encourage her to be candid about that just so that she
24 could get the appropriate medical treatment.

25 **THE COURT:** Okay. Ms. Silva, whatever your medical

1 situation is, obviously that's not pertinent to me but it's
2 certainly you should make the facility where you are aware of
3 that and so that you receive any treatment that you should --
4 that you may need. Okay?

5 **MR. PORTER:** Thank you.

6 **THE COURT:** All right. Thank you.

7 "Treatment" or "medical care," I should say.

8 **(Audio ended at 11:12 a.m.)**

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in cursive script, appearing to read "Toni Hudson", is positioned above a horizontal line.

Signed

June 29, 2020

Dated

TONI HUDSON, TRANSCRIBER